

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

AMERICAN RED CROSS BLOOD SERVICES-NEW
ENGLAND DIVISION¹

Employer

and

TEAMSTERS UNION LOCAL NO. 340, a/w
INTERNATIONAL BROTHERHOOD OF TEAMSTERS²

Petitioner

Case 1-RC-21946

DECISION AND DIRECTION OF ELECTION³

The Employer is a corporation, chartered by Congress, with facilities located in Maine, Vermont, New Hampshire, Massachusetts, and Connecticut.⁴ The Employer's Bangor, Maine facility, where it collects and distributes blood and blood products and performs related services, is the location at issue in this case. The Petitioner seeks to represent a unit consisting of collection specialists, mobile unit assistants, donor center assistants, technical instructors, and distribution technicians,⁵ employed at the Employer's Bangor, Maine facility. The Employer, on

¹ The name of the Employer appears as amended at hearing.

² The name of the Petitioner appears as amended at hearing.

³ Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

⁴ The parties stipulated that the Employer is a health care facility within the meaning of Section 2(14) of the Act.

⁵ The Petitioner originally included phlebotomists in the classifications of employees it sought to represent, but amended the petition at the hearing to eliminate the reference to phlebotomist inasmuch as this position is properly referred to as collection specialist. Additionally, I note the petitioned-for unit includes shuttle drivers, which position is also called distribution technician. Accordingly, further reference to this position in this Decision will be

the other hand, maintains that the only appropriate unit is one consisting of all non-professional, non-supervisory, and non-represented employees⁶ employed at the Employer's Bangor and Portland, Maine facilities.⁷ The Employer further contends that if a single-facility unit is found appropriate, the smallest appropriate unit must include all non-professional, non-supervisory, and non-represented employees at its Bangor facility. In this regard, the Employer maintains that the unit must be expanded to include a receptionist, two donor recruitment representatives, and an administrative assistant employed at its Bangor facility, as well as a donor recruitment representative employed at its Portland location.

I have carefully considered the evidence and arguments presented by both parties. As more fully set forth herein, and noting that the Employer is a health care institution, I find that the petitioned-for single-facility unit limited to the Employer's Bangor facility is presumptively appropriate, and that the Employer has failed to rebut this presumption. I further find, based on an empirical community of interest analysis, that the smallest appropriate unit consists of all Bangor employees directly involved in the Employer's blood drives.⁸

I. Overview of the Employer's Operations and Structure

The National American Red Cross, with its offices located in Washington, D.C., is the umbrella organization under which its various administrative divisions operate. This includes American Red Cross Blood Services–New England Division, which is comprised of three regions: North (which includes, among other locations, the locations at issue here), South, and Connecticut. The New England Division has facilities located in Bangor and Portland, Maine; Burlington, Vermont; Manchester, New Hampshire; Springfield, Worcester, Danvers, Methuen, Middleboro, Boston, Braintree, and Dedham, Massachusetts; and Farmington, Connecticut.⁹

by its proper name of distribution technician. Lastly, the parties stipulated that technician instructors should be included in the unit.

⁶ The Maine State Nurses Association currently represents the nurses, including charge nurses, at the Employer's Portland and Bangor facilities in one unit. The Petitioner currently represents the mobile unit assistants, the distribution technician, and the maintenance clerk employed at the Employer's Portland facility.

⁷ The unit the Employer maintains is appropriate would include all full-time and regular part-time non-professional employees, including collection specialists, collection specialists/LPNs, donor center assistants, technician instructors, aspheresis coordinators, receptionists, schedulers, donor recruitment representatives, tele-recruiters, account executives, administrative assistants II, and administrative assistants II/schedulers, employed by the Employer at its Portland, Maine and Bangor, Maine facilities and all full-time and regular part-time mobile unit assistants employed by the Employer at its Bangor, Maine facility, excluding all other employees, mobile unit assistants employed at the Employer's Portland, Maine location, professional employees, confidential employees, managers, guards, and supervisors as defined in the Act.

⁸ The appropriate unit includes all full-time and regular part-time collection specialists, collection specialist/LPN, technician instructors, donor center assistants, mobile unit assistants, and distribution technicians employed by the Employer at its Bangor, Maine facility, but excluding all other employees, confidential employees, professional employees, guards, and supervisors as defined by the Act.

⁹ Evidence was presented concerning bargaining units represented by numerous unions at the Division's other facilities, each of which provides for the inclusion and exclusion of different positions, as well as single and multi-facility units. It remains unclear, however, if these bargaining units were created as a result of litigation or were agreed to by stipulation. Nevertheless, I do not find this information useful as the petitioned-for unit involves the Employer's Bangor facility.

Mary O'Neill is the Divisional vice president. The Division's corporate headquarters, including its human resources department, is located in Dedham, Massachusetts. Regional Director of Human Resources MaryBeth Hassenfuss is responsible for the Employer's locations in Maine, New Hampshire, and Massachusetts. Her duties include overseeing recruitment, labor relations, employee relations, compensation, and benefits, as well as negotiating collective-bargaining agreements for the respective facilities. She is also involved in the grievance and disciplinary procedures depending upon the level of discipline involved, including such things as written warnings, suspensions, and terminations. A human resources representative, working out of the Employer's Dedham, Massachusetts facility, is assigned to the Employer's Portland and Bangor, Maine and Manchester, New Hampshire facilities. This representative is responsible for the recruitment of employees, employee relations, and the initial stages of labor relations at these facilities.¹⁰

II. The Employer's Business in Maine

The Employer provides a variety of blood collection and related services from its fixed site facilities located in Portland and Bangor, Maine, including collecting whole blood, double red cell donations, autologous donations, therapeutic phlebotomies, and, in the case of Portland, pheresis donations.¹¹ In addition, the Employer performs blood collection and related services from mobile units at either a fixed offsite location or in one of its two self-contained units.¹² The Employer is subject to strict licensing and regulation requirements by the Food and Drug Administration, as well as the National American Red Cross. Similarly, it must follow certain standardized policies and procedures that are promulgated by the federal government and contained in the Code of Federal Regulations (CFR), by the National American Red Cross, which are referred to as blood service directives (BSDs), and by the American Association of Blood Banks, which are referred to as AABB's. The North East Division also promulgated its own standard operating procedures (SOPs) that are its internal policies on non-regulated functions.

The Employer has divided the State of Maine into two territories, the North and the South. The Employer's Portland facility is responsible for Southern Maine, and its Bangor facility is responsible for Northern Maine. There are common shared areas between the two facilities known as the neutral zone and the extended neutral zone. Mobile units from either of

¹⁰ This position is currently vacant, although it was most recently held by Helene Maston. According to Hassenfuss, Maston traveled to the Employer's Bangor facility at least once a month and to its Portland facility at least two or three times a month, although she could have visited the facilities more often if needed.

¹¹ Whole blood collection consists of the collecting of one unit of blood from each donor. Double red cell collection is an automated procedure in which two units of packed red blood cells are taken from a donor at one sitting. An autologous donation is a procedure whereby blood is extracted from a donor for that donor's own use at a later time. Autologous donations are usually made by individuals scheduled to undergo surgery. Therapeutic phlebotomies are performed on donors with a doctor's orders and involve the collection of blood which is later destroyed. Generally, a donor in this situation has too much iron in his blood.

¹² The Employer has two self-contained units: a large bus and a small bus. The large bus covers the State of Maine and is located at the Portland and Bangor facilities. It is unclear from the record, however, the amount of time the bus remains at each facility. The small bus is located in Bangor. These self-contained units provide employees with everything required to run a blood drive, including beds.

the facilities, or a mixed unit comprised of employees from both facilities, will service this shared territory. Portland and Bangor are located 128 miles apart.

In terms of goals and collection tracking, Maine is treated as separate from the Division's Massachusetts and Vermont facilities. Maine is not, however, broken down by facility within the state for these purposes. Rather, the Employer has one combined monthly collection goal for the Maine facilities. Employees are made aware of how the facilities are doing in terms of the goals and collection tracking in a bulletin distributed to them weekly.¹³ This update also provides employees with deferral rates and failed rates of procedures combined for both facilities.¹⁴ These goals and figures are tracked state-wide.

All blood collected in Maine, including blood collected at the Bangor facility, is transported to the Employer's Portland facility, where it is packaged and sent to the Dedham facility. The Dedham facility sends samples of the collected blood to Philadelphia for further testing. After this testing, if the blood is deemed "good" it will then be distributed throughout the New England Division, depending upon the quantity of blood needed and the type of blood required.¹⁵

III. The Employer's Maine Facilities

The Employer's Maine facilities are under the direction of Susan Palmer, the executive director for the Northern New England region, which encompasses the Employer's Maine, Manchester, New Hampshire, and Burlington, Vermont facilities.¹⁶ Eileen O'Connell is the director of Maine operations, and oversees the Division's operations in Maine. O'Connell is located at the Employer's Portland facility. The Employer has one overall budget for its Maine operations, which can be broken down between the Portland facility and the Bangor facility in order to determine spending at each site.

Portland

The following department managers and/or supervisors work at the Portland facility and report directly to O'Connell: Compliance and Training Specialist (Problem Management) Paulette Poirier; Compliance and Operational Training Specialist Maureen Rouss; four team supervisors; Facility Distribution Supervisor (Portland) Dawn Brooks; and Manager DR/S Maine

¹³ O'Connell writes the bulletin weekly, although it may not go out every week due to O'Connell's schedule. The bulletin also serves as a means to inform the staff of events, new procedures, job openings at each facility, and general policy. The bulletin is distributed to Portland employees via their mailboxes. The bulletin is posted at the Bangor facility, however, because the Bangor employees did not like the Employer placing items in their mailboxes.

¹⁴ A deferral is when blood cannot be taken from a donor because of a problem identified when taking their health history. A failed procedure is one that has been started but cannot be finished.

¹⁵ Blood is delivered to hospitals in Bangor, Portland, and the Central Maine Medical Center in Lewiston, Maine. The blood collected in Maine is not always returned to Maine hospitals.

¹⁶ The Union introduced testimony regarding the distances between the Employer's locations in Massachusetts, the existence of unions at such facilities, as well as the corporate structure with regard to directors and managers. I conclude that such testimony is not significant to this proceeding as the location at issue is the Employer's Bangor, Maine facility.

(also known as the Donor Recruitment Coordinator) Dawn Gaffka.¹⁷ In addition, Administrative Coordinator Sue Worthing¹⁸ and Administrative Assistant II/Scheduler Cathy Vincent report directly to O'Connell and work at the Portland facility. Manager Collection–Operations Bangor Norma Wells reports to O'Connell and works at the Bangor facility.¹⁹

There are three technician instructors at the Portland facility who report to the compliance and operational training specialist, Rouss. The four team supervisors supervise separate teams of collection staff located at the Portland facility. This collection staff includes about eight to ten staff nurses, two collection specialists/LPNs, about 50 collection specialists, and two apheresis coordinators.²⁰

Reporting to Facility Distribution Supervisor Dawn Brooks, and located at the Portland facility, is an administrative assistant II, who serves as the receptionist for the Portland facility, a maintenance clerk, one distribution technician, seven to eight mobile unit assistants (MUAs), and one donor center assistant. Lastly, reporting to Donor Recruitment Coordinator Dawn Gaffka is one administrative assistant II, two schedulers, two account executives,²¹ five donor recruitment representatives (including two who work at the Bangor facility and one who works at the Portland facility and is responsible for the neutral zone), and two tele-recruiting supervisors,²² who, in turn, supervise ten tele-recruiters. According to O'Connell, Gaffka visits the Bangor facility once a week.

Bangor

Manager Collection–Operations Bangor Norma Wells is responsible for the collection side of the Bangor operations and her job duties/responsibilities are primarily to manage the operations–collection side of the Bangor facility.²³ Located at the Bangor facility and reporting directly to Wells is an administrative assistant II, one team supervisor, two collection specialists/LPNs, four MUAs, one distribution technician (Jane Laffey), the compliance training specialist, about seven staff nurses, about 19 or 20 collection specialists, one donor center assistant, one receptionist, and one technician instructor.

According to O'Connell, she is at the Bangor facility at least once a week and attends Bangor staff meetings once a month. O'Connell further testified that she meets with the Bangor

¹⁷ The parties stipulated that the compliance training specialists and team supervisors at both locations are supervisors within the meaning of Section 2(11) of the Act.

¹⁸ Worthing functions as an administrative assistant to O'Connell, and to human resources in Dedham, working on both Bangor and Portland issues. She works on regulated documents, which are ones that have to be checked periodically to make sure the Employer is using the correct documents and that previous copies of any revised documents no longer exist. In addition, Worthing works on employees' payroll.

¹⁹ The parties stipulated that Wells is a supervisor within the meaning of Section 2(11) of the Act.

²⁰ These numbers include both part-time and full-time employees.

²¹ The account executives also have a desk at the Bangor facility.

²² The two tele-recruiting supervisors share the position.

²³ In June 2005, Wells reduced her hours from 40 hours per week to 32 hours per week, although her title, duties, and responsibilities did not change.

staff individually every week. Prior to her arriving at the Bangor facility, O'Connell notifies the staff when she will be at the facility so that they may schedule appointments appropriately. Additionally, the Bangor staff may call her at her office in Portland to discuss a matter if they do not wish to wait until she visits Bangor again. The Employer, however, failed to introduce any evidence demonstrating the number of employees O'Connell has met with while at the Bangor facility, how often she met with them, and what classifications the employees belonged to.

O'Connell holds management meetings for managers and supervisors from both facilities, including Wells, Rouss, Laffey, Brooks, Gaffka, and the two tele-recruiting supervisors. Worthing also attends the meetings to take minutes. According to O'Connell, she holds these meetings in order to discuss management concerns, to work out any issues at the facilities, and to have a consensus among managers and/or supervisors regarding upcoming training programs. The meetings are held in Portland and the two attendees from Bangor, Wells, and Laffey participate by audio-conferencing. It is unclear from the record how often these management meetings are held, but they will not be held if there are no issues and/or concerns, or if another meeting is being held which requires the managers' and/or supervisors' attendance. Additionally, these meetings are not regularly held during the summer months because most of the staff is on vacation, and, therefore, those that remain are required to work in the field.

Bargaining History

As noted above, the Maine State Nurses Association currently represents the nurses, including charge nurses, at the Employer's Portland and Bangor facilities in one unit. The Petitioner currently represents the mobile unit assistants, the distribution technician, and the maintenance clerk employed at the Employer's Portland facility. In addition, on June 22, 1999, the Petitioner was certified as the collective bargaining representative for the following unit of the Employer's employees:

All full-time and regular part-time licensed practical nurses, technicians, tech instructors, phlebotomists, and donor center assistants employed by the Employer at its Bangor, Maine and Portland, Maine facilities and all full-time and regular part-time drivers employed by the Employer at its Bangor, Maine facility, but excluding all other employees, registered nurses, drivers employed by the Employer at its Portland, Maine facility, managers, guards, and supervisors as defined in the Act.

The election was conducted pursuant to a stipulated election agreement. The parties were unable to reach an initial collective-bargaining agreement and the Petitioner was decertified in 2001.

IV. The Employer's Policies and Procedures at its Maine Facilities

The Employer, for the most part, employs standard forms, procedures, and policies, at all its facilities throughout the New England Division, with the exception of Connecticut, which is in the process of converting to them.

A. Hiring

According to Hassenfuss, the Employer's hiring process is standardized throughout the New England Division. Under this process, directors and/or managers must complete the Employer's request for employee form in order to initialize the hiring process for a position that has been made available due to resignation or termination, or as the result of the creation of a new position. If someone other than the director fills out the form, it must be approved by the director. Once the request is completed and/or approved by the director, the form is then forwarded to human resources for its approval. Once the form is approved, human resources begins the recruitment process by posting the position, placing advertisements in print or on the web.²⁴ Human resources reviews and screens applications and resumes and forwards them to the interviewing/hiring manager and/or director for further review and screening. The interviewing/hiring manager and/or director will then conduct the interviews. Once that is completed and an applicant is selected for hire, human resources will perform the appropriate background checks and make the offer of employment, including discussing wage rates and benefits.

In the case of the Maine facilities, O'Connell has to approve any request for an employee, including one completed by Wells. According to Hassenfuss, the human resources representative assigned to these facilities reviews and screens the applications and/or resumes and forwards them to Wells, if the position is in Bangor, or to O'Connell, if the position is in Portland. Wells interviews the appropriate applicant(s), and, according to Hassenfuss, makes a recommendation to O'Connell on whether or not to hire the applicant(s). Hassenfuss further testified that Wells' recommendations were generally followed by O'Connell. Once the decision has been made to hire an applicant, human resources is contacted in order to complete the process described above. In the case of wages, each position is assigned a wage grade, with varying wage rates within the grade. An applicant's prior and relevant experience is considered when determining the appropriate wage rate within each grade. This decision is typically made by human resources, with input from the hiring manager and/or director, and the human resources representative must sign off on an employee's initial wage rate.

O'Connell testified somewhat differently than Hassenfuss about this process. According to O'Connell, she and Wells discuss the open position and the needs of the Employer prior to Wells' completing the request form. For example, employees have requested to decrease their hours, in effect creating openings, which can be filled internally by employees wanting to increase their hours, thereby eliminating a need for an employee. Once it has been determined that there is a vacant position, Wells completes the form and forwards it to O'Connell for her approval. O'Connell forwards the request form to Hassenfuss for her approval and the inception of the hiring process.²⁵ According to O'Connell, she, too, receives the applications and/or resumes for the vacant position in Bangor. After receiving them, she and Wells discuss the applicants and determine which ones to interview. Wells, along with Laffey, interview the

²⁴ In reviewing the weekly bulletins drafted by O'Connell, which the Employer submitted as Employer Exhibit 28, I note that job openings for both facilities are advertised there, as well.

²⁵ If the request is for a new position, as opposed to a vacant one, the request must go to Palmer, the executive director for the Northern New England region, for her approval prior to being forwarded to human resources.

applicants. O'Connell, however, will participate in interviews when she is present at the Bangor facility. O'Connell testified that she has participated in about four out of the approximately eight interviews conducted at the Bangor facility during her thirteen months as the director. The positions involved, however, were nursing positions, and O'Connell could not recall the circumstances surrounding her participation in these interviews. According to O'Connell, it is ultimately her decision on who to hire, but she and Wells usually agree on the type of person they are looking for, and, therefore, come to an agreement on whom to hire.

As for the Portland employees, O'Connell testified that the process is identical, except that she might have a team supervisor conduct the interview. Wells, however, has no role in the interviewing and/or hiring of Portland employees.

B. Reviews/Evaluations

Performance evaluations on employees are completed once a year using a standard American Red Cross performance review form. Employees, based on their performance, receive a percentage increase in their wage rates depending upon criteria within the wage performance program established by human resources. Supervisors and/or managers complete this form for all employees who report directly to them. Once the supervisors and/or managers complete the review form it is forwarded to the director for her review. The director forwards it to the chief executive officer for her review, and she then returns it to the director to be submitted to human resources. Human resources processes the appropriate wage increase as determined by the performance review.

Both the Portland and Bangor locations use the standard form for evaluating employees. In the case of Bangor employees, Wells completes the form, makes a recommendation for the employees' overall rating, as well as the wage increase, and forwards the evaluation to O'Connell for her review.²⁶ According to Hassenfuss, Wells may also have some input in regard to the performance reviews of team supervisors and charge nurses located at the Portland facility, as she has some exposure to them if they have worked a Bangor or mixed blood drive.²⁷

C. Benefits and Wages²⁸

The Employer's 2005 benefits summary for non-represented employees in Massachusetts and Maine applies to all employees at its Bangor facility, excluding nurses, who are represented by Maine State Nurses Association, and to all employees at its Portland facility, excluding those employees currently represented by the Petitioner and the nurses represented by Maine State

²⁶ Hassenfuss could not say whether or not O'Connell followed Wells' recommendations and O'Connell did not testify about it.

²⁷ The record does not contain any evidence as to whether or not this has actually occurred. Additionally, O'Connell did not testify about Wells' input into Portland employees' evaluations.

²⁸ According to Hassenfuss, depending upon the collective bargaining unit, different wage scales, health insurance, employee contributions, holidays, sick time, and overtime exist between its unionized employees and its non-represented employees throughout the New England Division.

Nurses Association.²⁹ The National American Red Cross provides these non-represented employees, as well as its employees throughout the country, with such benefits as health insurance, dental insurance, life insurance, accidental death and dismemberment insurance, supplemental life insurance, flexible spending accounts, a retirement plan, and a 401(k) plan. Employees in Maine also receive benefits administered locally by the New England Division, including vacation, holidays, personal days, sick leave, bereavement leave, jury duty, military duty, short term disability insurance, long term disability insurance, an employee assistance program, pre-paid legal assistance, tuition assistance, direct deposit, U.S. savings bonds, and tax deferred annuities. There is no distinction between the benefits provided to the employees at the Employer's Portland and Bangor facilities. In addition, the Employer holds separate annual employee barbecues on different dates and locations for the Portland employees and for the Bangor employees.

Also, as mentioned previously, the Employer, provides a wage grade for each position, which carries varying wage rates. The wage grade assigned to a position does not differentiate between the Portland and Bangor facilities, except for the MUAs. The MUAs in Portland receive different wages than those in Bangor because their rate is set by the collective-bargaining agreement between the parties.

D. Discipline – Non-represented Employees

Both the Portland and Bangor facilities follow the American Red Cross Blood Services–New England Region Human Resources Policy and Procedure for Performance Intervention/Discipline Process. This process is a progressive disciplinary policy and guideline that provides for categories of intervention, including counseling, memorialized oral warning, written warning, suspension without pay, administrative suspension, and discharge, and specifies incidents or situations which require intervention and the determination of appropriate intervention. Depending upon the nature of the discipline, the human resources representative may be consulted in the initial disciplinary process. Once discipline becomes more progressive, however, i.e., written warning, suspension, and/or termination, human resources is involved throughout the process.

According to Hassenfuss, Wells is responsible for counseling and disciplining employees in Bangor, which she has done in the past. O'Connell is responsible for the counseling and disciplining of Portland employees. Wells has no involvement in this process as to Portland. According to O'Connell, however, Wells will contact her if there is an issue with a Bangor employee and they will discuss it. Afterwards, Wells contacts human resources and works with

²⁹ The Employer's facilities in Manchester, New Hampshire and Burlington, Vermont have different benefits such as earned time program for vacation and sick time accrual. Massachusetts and Maine are on an annual leave program. According to Hassenfuss, the earned time program is going to be implemented for all Massachusetts and Maine non-represented employees in about January 2006. All other benefits are identical for Manchester and Burlington, except the earned time program. The earned time program is a bank of time where employees put all the holidays, vacation accruals, and sick time accruals into one bank. However, in order to implement the earned time program for its unionized facilities, the Employer needs to bargain with the appropriate bargaining representatives. According to Hassenfuss, if the Employer implemented the earned time off program for some employees in Maine and not others, then, practically speaking, it would be more burdensome for the Employer to maintain two separate compensation systems.

it to put together a response. If the response is simple, such as a verbal instruction or a verbal warning, Wells deals directly with the employee herself. If the response is more progressive, such as a final written warning, suspension, and/or termination, O'Connell travels to Bangor and she and Wells together will discipline the employee. Again, according to O'Connell, ultimately it is her decision as to what level of discipline to impose, even though it is a collaborative effort between herself, Wells, and human resources. O'Connell testified that she and Wells have disagreed about the level of discipline an employee should receive. In fact, this last year, when an employee was caught smoking on school grounds during a mobile drive, O'Connell wanted to suspend and/or terminate the employee, whereas Wells recommended a final warning. In the end, the employee was given a final warning as Wells had recommended.

E. Scheduling

Cathy Vincent, the administrative assistant II/scheduler, is responsible for scheduling the collection staff at both the Bangor and Portland facilities.³⁰ Vincent enters the drives and the staff, excluding those staff members who are unavailable to work due to a leave situation, into a computer program known as "the Juggler." The program assigns staff to a drive depending upon the location of the drive and the facility where the staff member is assigned. Vincent then reviews the schedule, makes corrections, and manually assigns staff members to the drives as needed. Staff members from both the Bangor facility and the Portland facility may be assigned to drives in the shared neutral zone or to drives in another region if coverage is required. The Employer makes up two schedules, one by staff members' names, and the other by drive locations. The drive location schedule is distributed to Portland employees via their mailboxes and the employee name schedule is posted at the facility. Both schedules are posted at the Bangor facility.

F. Leave Procedure

The Employer maintains guidelines as to how many employees in each classification may be off at the same time. If an employee wishes to take vacation then he or she must fill out the Employer's New England Region application for leave form. In Bangor, employees submit this form to Wells for her approval.³¹ This form is forwarded to Vincent, the scheduler, so that she is made aware of the time off in order to schedule employees appropriately. The Employer also maintains separate logbooks at each of its Portland and Bangor facilities in order for employees to request shorter time periods off, such as several hours on a particular day for a doctor's appointment. These requests are also forwarded to Vincent. The record is not clear, however, as to who approves these requests.³² As for sick leave, employees who are sick prior to going out on a mobile drive or enroute to a mobile drive must call Vincent in order for her to find

³⁰ According to her job description, Vincent coordinates staffing activities to ensure appropriate staffing for maintaining optimum productivity and quality donor care. She performs all duties and responsibilities in compliance with SOPs, as well as other regulations and applicable federal, state, and local laws.

³¹ According to O'Connell, Wells may speak with Vincent prior to approving leave in order to see how many employees are off during that time period.

³² According to Vincent's job description, she may approve staff vacation, sick leave, and other time off requests based on staffing needs, and policies and procedures.. O'Connell and Hassenfuss did not testify, however, that Vincent actually approved the vacation, but rather, only that she received the requests after they had been approved.

coverage. For after-hours calls, the Employer has an on-call staff, consisting of Vincent and Jennifer Black, who alternate evenings, to receive incoming sick calls. Additionally, Bangor employees call Wells to notify her of their absence. And, in instances when Bangor employees are working at a mobile drive, they are required to speak with the team supervisor or charge nurse in charge of the drive. Employees working a drive at the Bangor fixed site are required to speak with Wells or, in her absence, the charge nurse.

G. Training

Human resources provides new employees with a two-day program for new employee orientation, covering such topics as benefits, safety, diversity, worker's compensation, the history of the American Red Cross, general meeting practices, and good manufacturing practices. New employee orientation typically takes place in Dedham, Massachusetts. The frequency of these orientation sessions varies, however, although they could be held as often as once a month. In January and early February 2005, the Employer conducted two orientation sessions in Dedham where employees from the following locations attended: Bangor and Portland, Maine; Manchester, New Hampshire; Dedham, Danvers, Springfield, and Braintree, Massachusetts.

In addition to new employee training, the Maine facilities provide employees with on-going training. Poirier, the compliance and operations training specialist (problem management) is the problem manager for the State of Maine. Poirier is responsible for tracking problems with, and deviations in, the performance or function of collecting blood, whole blood, or pheresis product. Poirier reports such information to, and works with, Rouss and Laffey, the compliance training and operational specialists, supervisors and/or managers, and staff to resolve the issues.³³ Rouss and Laffey oversee training and compliance in terms of the Employer's day-to-day operations at its Maine facilities, including health histories, blood sticks, swabbing patients, and so forth. They work together to formulate and develop training for employees at both facilities. They also conduct training sessions at their respective facilities.

According to O'Connell, Rouss and Laffey also work in conjunction with their respective technician instructors to plan for orientation and training sessions. The Employer has the training staff from both facilities work together in order to ensure that its policies and procedures are standardized throughout the state. Laffey and the Bangor technician instructor meet with Rouss and the Portland technician instructors via audio conferencing. The frequency of the meetings between the Portland and Bangor training staff and their respective compliance and operational training specialist depends on what procedure is being introduced. According to O'Connell, several months could go by without any meetings between them. Once a training procedure is in place, the training specialists and technician instructors return to their respective facilities and train their respective staffs on the new procedures and/or regulations. Additionally, there may be times when a Portland technician instructor leads a Bangor training session and vice-versa, although it is unclear from the record how often this occurs. Additionally, there are instances where Portland and Bangor staff attend training sessions together, led by technician instructors and training specialists at their respective sites. To that end, the Employer introduced

³³ Again, the Employer's procedures from the point when a donor enters the process until they leave is highly regulated by the FDA. Every question that is asked the donor, how employees move patients, swab patients, and draw blood are all regulated.

nine packages of training sessions where both Portland and Bangor employees were present.³⁴ These training sessions consisted of multiple courses for each session. The record is not clear, however, whether the training was for new or current employees.³⁵ Two of the training sessions held at the Employer's Portland facility were identical to a training session held at its Bangor facility. In this instance, there was an employee from Portland who attended several of the Bangor courses and two Bangor employees who attended several of the Portland courses, although it appears that they were making up classes that they missed at their respective facilities.³⁶ Additionally, employees attending a training session at a location other than their own, in most instances, did not attend each and every course in that session.

H. Interchange Between the Employer's Portland and Bangor Employees

Employees seeking a permanent transfer from one location to another are required to complete the Employer's internal transfer/bid form, which is used at all of its locations except Connecticut. Once a transfer has occurred, human resources completes an internal personnel action form (PAF), which is used to make changes to employees' personnel or payroll records. During the last three years, only one transfer has occurred between the Bangor and Portland facilities based upon a review of PAFs. Debra Merry transferred from the Portland facility to the Bangor facility on June 25, 2005. The form, however, fails to identify what position Merry is employed in, although it can be inferred that she holds a collection position, as the form indicates Wells is her supervisor in Bangor. Additionally, it appears that the transfer was at the behest of Merry, as it was introduced in conjunction with the Employer's internal transfer/bid form, which is used by employees for applying for internal positions. Additionally, O'Connell testified that a recently hired tele-recruiter working out of the Portland facility who services the shared neutral territory chose to work at the Portland facility as she lived closer to that one. The previous employee in this position had worked out of the Bangor facility.

According to Hassenfuss, temporary transfers of employees between the two locations occur when coverage is needed on mobile units. There was, however, no evidence of how often such transfers occurred or how many employees were involved. Contact exists between the Portland and Bangor collection staffs when they are required to work a combined mobile drive in the neutral territory. The Employer introduced its blood drive schedules from January 9 through August 6, 2005, excluding six weeks where there were no mixed drives,³⁷ in order to demonstrate the frequency with which the employees from these facilities work together. During

³⁴ Employer Exhibit 24 contains eleven packages of training sessions. Only nine of them, however, involved employees from both locations. The other two consist only of Portland employees and, thus, were not counted in the above figure.

³⁵ O'Connell testified that this training is on-going training for employees, and is separate from new employee training. O'Connell, however, also testified, although without explanation, that new employees from the Portland facility were undergoing their health history training in Bangor.

³⁶ Several courses contained in training session packages were duplicative. In addition, it appears that the Employer may have misidentified the location where employees worked. For example, in packet 8 in the immediate intervention assessment course, the Employer indicated that employee Christine Bessey was a Portland employee, while on other course attendance sheets in that package, Bessey is listed as a Bangor employee.

³⁷ Blood drive schedules were omitted for the following weeks: January 2, February 13, May 1, May 29, June 19, and July 23, 2005.

this time period, excluding the number of drives conducted during the weeks where there were no mixed drives, there were 591 mobile drives conducted by the Employer.³⁸ Out of the 591 mobile drives conducted, only 55 were conducted with staff from both facilities.³⁹ Based on the 25 weeks of drive schedules provided by the Employer, the Employer conducts an average of 24 mobile drives per week. If this number includes the six weeks where no mixed drives occurred, the total number of mobile drives for the 31 week period prior to the hearing is 735. Thus, during that period, only 7.5 percent of the Employer's mobile drives were conducted by a mixed collection staff consisting of employees from both facilities.

I. Dress Code

The Employer regulates the manner in which employees dress. The New England Division maintains a dress code for all of its employees, including those working in Maine. The Maine facilities, however, have their own dress code that applies to employees at both of its facilities. According to O'Connell, Maine's dress code is more specific than the divisional one, and is used in order to ensure employees are dressed appropriately for the drives.

J. Committee Meetings

The Employer has two committees comprised of employees from both facilities. The first one, the repackaging high school drive committee, is an on-going committee that meets via videoconferencing. This committee consists of 10 employees. According to the Employer, three of its members are Bangor employees. Two out of these three employees, Laffey and McDonough, are supervisors, and the third, Heather Babcock is a recruiter who covers the Bangor territory, but presumably works at the Employer's Portland facility. The second committee, the expectations committee, has been organized, but has not yet met, although it is expected to meet sometime in September and October 2005. A Bangor collection specialist, Yvette Bauer, has been selected to serve on this committee.

V. Job Classifications at the Employer's Maine Facilities

Both the Bangor and Portland facilities employ team supervisors, staff nurses, charge nurses, collection specialists, collection specialists/LPNs, MUAs, donor center assistants, technician instructors, distribution technicians, and administrative assistants II. The Bangor facility also employs a receptionist, while the Portland facility employs an administrative assistant II/scheduler and the donor services staff that services both facilities.

A. Donor Services Department

This department, under the direction of Donor Recruitment Manager Gaffka, is responsible for recruiting donors, soliciting sponsors of mobile unit drives, and scheduling donors and the drives, including the location of the mobile drives. The department consists of

³⁸ This figure excludes the shuttle runs that transport blood and blood products from the Bangor facility to the Portland facility, as well as the drives conducted at the Employer's fixed sites.

³⁹ This number reflects the employees who were originally assigned to the drive and not any handwritten name assignments. The only handwriting admitted as evidence, on Employer Exhibit 23, was the number of mixed drives.

two schedulers, two account executives, five donor recruitment representatives, including two who work at the Bangor facility and one who works in Portland but supports the shared neutral zone, ten tele-recruiters, and one administrative assistant II.

1. Donor Recruitment Representative

Donor recruitment representatives identify, develop, plan, and implement effective strategies to attract, recruit, and retain donor groups to sponsor mobile or fixed site blood collection operations sufficient to achieve established blood collection goals, and strategies to ensure sufficient numbers of specialized donors (apheresis, bone marrow, plasma, stem cell, and so forth) to meet program needs. They develop potential group leads, train donor group chairmen in organizational requirements, provide on-going support to donor groups, implement appropriate special donor recruitment programs, and provide follow-up record keeping and recognition. Donor recruitment representatives perform all duties and responsibilities in compliance with SOPs, regulations outlined in the CFR, and other applicable federal, state, and local laws. This position requires a bachelor's degree and is a grade 7, exempt position. It carries an OSHA III classification.⁴⁰ Donor recruitment representatives may visit a drive or drives they have coordinated, depending upon their schedule. Currently, there are five donor recruitment representatives. Three work at the Portland facility, including one who recruits for the shared neutral territory, and two work at the Bangor facility.

2. Account Executive⁴¹

Account executives are responsible for: 1) managing assigned accounts through educating, selling, researching, developing, and promoting blood donor recruitment activities, and ensuring effective interaction with corporate account executives, volunteers, sponsors, donors, and chapters for American Red Cross Blood Services–New England Region activities; 2) ensuring the achievement of blood collection goals, average per mobile, and accurate projecting rates; and 3) adhering to all donor services guidelines and performance standards. This is a grade 8, exempt position with an OSHA III rating and requires job knowledge equivalent to that gained through the completion of a bachelor's degree program. According to O'Connell and Hassenfuss, account executives perform similar functions as donor recruitment representatives. As is the case with donor recruitment representatives, account executives may also visit drives that they have coordinated, depending upon their schedules. Currently, there are two account executives employed at the Portland facility. According to Hassenfuss, these account executives support both the Portland and Bangor locations. Additionally, there is a desk at the Employer's Bangor facility for the account executives' use.

3. Tele-Recruiter

Tele-recruiters place outbound calls to recruit blood donations from the current donor base, including special groups, organizations, businesses, churches, and schools. They are

⁴⁰ An OSHA III classification is given to employees whose normal work involves no exposure to bloods or blood components and/or bodily fluids or tissue samples as a result of splashes, spills, and/or needlesticks or performance of or assistance in first aid.

⁴¹ This position is also referred to as account representative.

responsible for contacting previous blood donors to ensure that the number of appointments scheduled achieves the established collection goals within the tele-recruiting department. They complete reminder calls, appropriate follow-up, modification of records, and special projects to achieve established goals. This is a grade 2, non-exempt position, with an OSHA III classification. Tele-recruiters are located in Portland and report to the two tele-recruiting supervisors, although they support both the Bangor and Portland facilities.

4. Scheduler

According to O'Connell, the scheduler confirms the drives that have previously been set up and inputs them into the computer. Currently, there are two schedulers at the Portland facility who support both Bangor and Portland. The schedulers make appropriate changes to the schedule, including the location and the number of staff needed for the drives. Schedulers are responsible for printing out the drive schedule. In addition, schedulers are required to perform MUA duties, as requested. According to O'Connell, however, only one of the schedulers is currently trained as an MUA. O'Connell indicated that this scheduler might work as an MUA once a week, once every other week, or otherwise, and that it depended on whether the Employer had open MUA positions on its drives. This is a grade 6, non-exempt position with an OSHA II classification.⁴² The schedulers report to Donor Recruitment Manager Gaffka.

5. Administrative Assistant II

The administrative assistant II, Jennifer Black, provides secretarial support to the donor recruitment department, which includes typing, copying, answering phones, filing, coordinating departmental travel needs, and other clerical functions. In addition, Black rotates on-call duties with Vincent for night time employee sick calls. This is a grade 5, non-exempt position with an OSHA II classification. Black works at the Portland location and reports to Gaffka, although she supports donor recruitment employees at both facilities.

B. Collection Staff

The Employer's collection staff consists of team supervisors, charge nurses, staff nurses, collection specialists, collection specialists/LPNs, MUAs, donor center assistants, technician instructors, and apheresis coordinators. The collection staff, excluding the donor center assistants and the apheresis coordinators located at the Portland facility, work both mobile and fixed site drives.⁴³ This staff accomplishes the actual collection of blood. These employees are responsible for performing all aspects of the blood collection process, including registering donors, performing health histories for the donors, preparing blood bags, and drawing blood.

⁴² An OSHA II classification is given to employees who occasionally, on an unplanned basis, are required to work under conditions where the potential exists for employees to make contact with blood or blood components as a result of splashes, spills, and/or needlesticks.

⁴³ Apheresis coordinators are responsible for coordinating the pheresis department located at the Employer's Portland facility. The apheresis coordinators oversee appointments and do some scheduling. The apheresis coordinator works with the team supervisor for pheresis to make sure that the department is running smoothly, individuals are donating, and the supplies are in order. It does not appear that the apheresis coordinators actually collect any blood or blood products. They report to team supervisors.

The collection staff is supervised, in the sense that they receive directions, on mobile drives and at fixed site drives by team supervisors and/or charge nurses.⁴⁴ Team supervisors and/or charge nurses are not allowed to discipline the Bangor collection staff employees while supervising them on a mobile drive. Rather, if the team supervisor and/or charge nurse has an issue with a Bangor collection staff employee, she is required to report the issue to Wells, who is responsible for taking the appropriate action thereafter. The Employer's staff nurses are eligible to serve as charge nurses on mobile drives in place of team supervisors, and, when doing so, assume the team supervisor's responsibilities. The Employer provides its charge nurses from both facilities with a Maine charge nurse booklet that was developed by Maine managers in order to assist the charge nurses in carrying out these duties. Staff nurses, when not serving as charge nurses, perform the same job duties as collection specialists. These nurses are represented by the Maine State Nurses Association.

According to Hassenfuss, the Employer is seeking a multi-facility unit because having union and non-union collection staff working side by side would create a problem with day-to-day management at the shared mobile drives, including such things as vacation scheduling, breaks, and overtime. Hassenfuss further testified that if this occurred, it would create a unique situation for the Employer.

1. Collection Specialist and Collection Specialist/LPN

The job duties are identical for these positions, except for the fact that the collection specialist/LPN position requires employees to have a current LPN license in addition to cardio-pulmonary resuscitation (CPR) certification. Collection specialists are responsible for all aspects of blood collection according to specified standards, with consideration for the donor's care, comfort, retention, and the quality of the product for the recipient. This includes performing, preparing, and packing equipment at a collection site, taking donors' health histories and vital signs, and performing phlebotomies.⁴⁵ All procedures performed by collection specialists are regulated by the FDA, and by the Employer's SOPs and BSDs. Collection specialists in Bangor report directly to Wells, while those in Portland report to a team supervisor, although when working on a mobile unit they take direction from either the team supervisor or charge nurse assigned to the mobile drive. This is a grade 6, non-exempt position with an OSHA I classification.

2. Donor Center Assistant

Donor center assistants are responsible for greeting donors, assisting the collection staff in providing donor care, including serving refreshments and providing appropriate materials if needed, processing blood products, preparing documents associated with the donor center

⁴⁴ Claire McDonough, the team supervisor located at the Employer's Bangor facility, is not responsible for any employees, except when she serves as team supervisor for a particular drive, as all collection staff employees at the Bangor facility report directly to Wells. Additionally, McDonough's job varies slightly from other team supervisors in that she oversees mainly double red cell drives, as this is her area of expertise. Since the majority of double red cell drives are conducted at the fixed site, she primarily works there, as opposed to mobile drives. As a result, the Bangor facility relies primarily on charge nurses during mobile drives.

⁴⁵ Phlebotomy is the medical term for drawing blood.

collection, including the laboratory notification sheets and batch cards, and performing tasks to support efficient donor service. Donor center assistants are also responsible for answering incoming calls, responding to routine questions, and routing calls to the appropriate staff. They assist in the maintenance of appointment sheets and route donor center records, as assigned. Donor center assistants are responsible for supplies at the facilities, including taking inventory, ordering, storage, and rotation. The donor center assistant in Bangor reports to Wells, while the ones in Portland report to a team supervisor. According to Hassenfuss and O'Connell, donor center assistants perform the same job duties as MUAs, except for the fact that they do not go out on mobile drives. MUAs may perform the donor center assistant's job, but donor center assistants cannot perform the MUA's job because they are not trained to set up and break down the equipment for the mobile drives. While the record does not identify the wage grade for this position, it is a non-exempt position with an OSHA I classification.

3. Technician Instructor⁴⁶

The position of technician instructor is a grade 7, non-exempt position with an OSHA I classification. Technician instructors perform the same job duties as collection specialists, and, in addition, they are also responsible for the clinical instruction and training of new collection specialists and MUAs, as well as for training current employees in new procedures and/or regulations that are being implemented. As discussed previously, the technician instructor in Portland reports to the compliance/operation training specialist in Portland, while the one in Bangor reports directly to Wells. When working at a collection site, both report to the team supervisor or charge nurse.

4. Mobile Unit Assistant⁴⁷

MUAs are responsible for loading, transporting, unloading, setting up, and breaking down blood collection equipment to and from mobile sites. They are also responsible for the labeling, handling, storing, and transporting of blood and blood products in accordance with Employer SOPs. They also assist with donors, including monitoring them in the canteen area as directed by the charge nurse or team supervisor. They assist in all phases of bloodmobile operations and donor center operations. The MUAs in Bangor report directly to Wells, while those in Portland report to a team supervisor. As is the case with collection specialists, they take direction from the team supervisor or charge nurse when assigned to a mobile drive. MUAs are assigned to work either 24, 32, or 40 hours per week.⁴⁸ The record does not indicate the wage grade for this position, but it is non-exempt with an OSHA I classification.

⁴⁶ The Employer has separate job descriptions for the technician instructor in Portland and the one in Bangor, although O'Connell testified that the two descriptions are identical.

⁴⁷ As noted above, the MUAs in Portland are currently represented by the Petitioner.

⁴⁸ The number of hours an MUA works is determined at the time she is hired, although hours have been changed during the course of employment. MUAs may request to increase or reduce their hours.

C. Support Positions

1. *Distribution Technician*

Distribution technicians are responsible for performing a variety of duties related to receiving, storing, inspecting, packing, and delivering blood components, samples, supplies, goods, and materials. This position is a regulated position, as distribution technicians must adhere to Employer BSDs and SOPs when performing their job duties. Distribution technicians are only employed at the Employer's Portland facility. The Bangor distribution technician is responsible for transporting the blood and blood products collected by the Bangor facility to and from the Portland facility. This is known as the shuttle run and appears on the Employer's blood drive schedule. The distribution technician employed at the Bangor facility reports directly to Wells, while the one employed at the Portland facility, who is currently represented by the Petitioner, reports to Brooks, the facility distribution supervisor.

2. *Receptionist*

This is a grade 3, non-exempt position, with an OSHA III classification, located at the Bangor facility. The receptionist is responsible for answering and routing calls to the appropriate party; receiving visitors, answering general questions, and directing individuals to the appropriate person within the organization. She also assists with the placement of outgoing calls, scheduling conference rooms, and performing other routine clerical duties.⁴⁹

3. *Administrative Assistant II/Scheduler*

This position is held by Vincent, who works at Portland. The majority of her duties were discussed previously in regard to the Employer's scheduling of employees. This is a grade 5, non-exempt position with an OSHA II classification. In addition to scheduling duties, the scheduler may also perform the duties of an MUA. The record does not indicate, however, whether the scheduler is certified or not, or whether she actually has performed these duties.

4 *Administrative Assistant II*

This is a grade 5, non-exempt position with an OSHA II classification, located in Bangor. The administrative assistant II provides secretarial support, including typing, copying, answering phones, filing, and other clerical functions. The position is held by Cathy Preyer and she reports directly to Wells. Preyer is the administrative assistant to Wells and Laffey, although she occasionally assists some of the recruiters.

VI. Analysis - Scope of the Unit

It is well-established that a petitioned-for unit need not be the most appropriate bargaining unit. All that is required is that the unit be an appropriate bargaining unit. *American Hospital Assn.*, 499 U.S. 606, 610 (1991). In *Manor Health Care Corp.*, 285 NLRB 224, 226

⁴⁹ According to O'Connell, the Portland facility does not have a receptionist position. She believes the administrative assistant II performs the receptionist duties at Portland.

(1987), the Board extended the “single-facility presumption,” under which a single-facility is presumed to be appropriate, to the health care industry. The party opposing the single-facility unit has the heavy burden of overcoming the presumption. *Mercy Medical Center San Juan*, 344 NLRB No. 93, slip op. at 1 (2005), citing *Trane*, 339 NLRB 866 (2003), and *Visiting Nurses Assn. of Central Illinois*, 324 NLRB 55 (1997).

In order to rebut the single-facility presumption, the party opposing the single-facility unit must demonstrate integration so substantial as to negate the separate identity of the single-facility. *Id.*, citing *Heritage Park Health Care Center*, 324 NLRB 447, 451 (1997), enf. 159 F.3d 1346 (2nd Cir. 1998). In determining whether the presumption has been rebutted, the Board examines such factors as centralized control over daily operations and labor relations, including the extent of local autonomy; the degree of employee interchange, transfer, and contact; functional integration, similarity of skills, functions, and working conditions, geographic proximity, and bargaining history. *Passavant Retirement & Health Center, Inc.*, 313 NLRB 1216, 1218 (1994), citing *Mercy Health Services*, 311 NLRB 367 (1993); *Compact Video Services*, 284 NLRB 117, 119 (1987). Moreover, the Board considers the degree of interchange and separate supervision to be of particular importance in determining whether the single-facility presumption has been rebutted. *Id.*, citing *Towne Ford Sales*, 270 NLRB 311, 311-312 (1984), affd. sub nom. *Machinists Local 1414 v. NLRB*, 759 F.2d 1477 (9th Cir. 1985); *Mercywood Health Building*, 287 NLRB 114, 116 (1987), enf. denied sub nom. *NLRB v. McAuley Health Center*, 885 F.2d 341 (6th Cir. 1989). In the health care industry, the Board also examines whether a single-facility unit creates an increased risk of work disruption or other adverse impact upon patient care should a labor dispute arise. *Manor Health Care Corp.*, supra at 226; *Mercy Medical Center San Juan*, supra, slip op. at 1.

Applying the above factors to this case, I find that the Employer has failed to satisfy its burden of rebutting the presumption in favor of the petitioned-for single-facility unit. In reaching this conclusion, I rely on the local autonomy exercised by Wells at Bangor, the lack of evidence of substantial employee interchange or contact, and the geographic separation of the two locations. See, e.g., *Oklahoma Blood Institute*, 265 NLRB 1524, 1525 (1982). I recognize that the Employer maintains central control of many aspects of labor relations, and that there is administration and operational integration between the Employer’s Portland and Bangor facilities, including scheduling of the collection staffs, posting of job openings, and a similarity of job functions, skills, and pay among its employees. Based on these factors, a combined unit would, if sought, constitute an appropriate unit. I find, however, that here, these factors are insufficient to overcome the single-facility presumption. See *Rental Uniform Service, Inc.*, 330 NLRB 334, 335 (1999), citing *Carter Hale Stores*, 273 NLRB 621 (1984). Additionally, I accord little weight to prior bargaining history between the parties involving the Bangor and Portland facilities.⁵⁰ Lastly, the Employer produced no evidence that a single-facility unit would

⁵⁰ The Petitioner currently represents the MUAs, the distribution technician, and the maintenance clerk at the Employer’s Portland facility. The record does not indicate, however, whether this unit was determined by litigation or resulted from stipulation. The Petitioner previously represented licensed practical nurses, technicians, tech instructors, phlebotomists, and donor center assistants employed at the Employer’s Portland and Bangor facilities, and all drivers employed by the Employer at its Bangor facility. The election in this unit was, however, conducted pursuant to a stipulated election agreement, and the Petitioner was decertified prior to reaching an initial collective-bargaining agreement with the Employer. Generally, the Board is not bound by a collective-bargaining history

create an increased risk of work disruption or other adverse impact on patient care should a labor dispute arise.⁵¹ Accordingly, as discussed more fully below, I find the petitioned-for single-facility unit consisting of Bangor employees to be appropriate.

A. Local Autonomy

As mentioned above, the Employer maintains central control of aspects of its labor relations for its facilities in its North East Division, including standardized hiring procedures and forms, including applications; performance evaluation procedures and forms; disciplinary procedures; and leave forms. The Employer provides its non-represented employees in Maine and Massachusetts with identical benefits. It also provides wage grades for each classification of its employees. Additionally, the division's human resources department is involved to some extent with the day-to-day operations of the Maine facilities in regards to the application process, the hiring process, and the disciplinary process. Moreover, the budget and dress code is the same for both facilities. The Employer tracks its collections state-wide and Kathy Vincent does the scheduling for both facilities. The maintenance of such centralization and uniformity, however, does not by itself render a single-facility unit inappropriate, especially, when there is a high degree of local autonomy. See *Memorial Medical*, 230 NLRB 976, 977 (1977), citing *Salvation Army, Inc.*, 225 NLRB 406 (1976); *Scotts IGA Foodliner*, 223 NLRB 394 (1976); *Allegheny Pepsi-Cola Bottling Co.*, 223 NLRB 45 (1976); *O'Brien Memorial, Inc.*, 308 NLRB 553 (1992); *Visiting Nurses Assn. of Central Illinois*, 324 NLRB 55 (1997).

Wells, as the Manager Collection–Operations at the Employer's Bangor facility, is given substantial local autonomy in managing the day-to-day operations of that facility. All employees at the Bangor facility, except for the two donor recruitment representatives, report directly to Wells. Wells has the authority to hire employees, discipline employees, evaluate employees' work performance, which also serves as the basis for merit increases, and approves vacation and leave requests. Wells' authority to hire employees includes selecting applicants for interviews, interviewing employees, and effectively recommending employees for hire. Although O'Connell has the final authority on hiring for the Bangor facility, Hassenfuss testified that Wells' recommendations were generally followed. As for discipline, Wells is permitted to discipline employees involving verbal instructions and verbal warnings, with limited input from human resources in order to ensure the Employer's proper guidelines are being followed. In instances of more progressive discipline involving written warnings, suspensions, and terminations, Wells effectively recommends such discipline to O'Connell, which again is followed by her. Even when O'Connell and Wells have disagreed on the level of discipline for an employee, O'Connell followed Wells' recommendation rather than her own. Such significant

resulting from consent election agreements conducted pursuant to a unit stipulated by the parties, as opposed to one determined by the Board. *Amoco Production Co.*, 233 NLRB 1096, 1097 (1977).

⁵¹ The Employer, rather, argued that it would be difficult on day-to-day management of the mobile drives in regards to vacation scheduling, breaks, and overtime, and would create a unique situation for it, if non-union and union collection staff worked side by side. This situation, however, is not unique, as it is currently present with the Employer's MUAs, who are represented by the Petitioner working on mobile unit drives alongside nurses who are represented by the Maine State Nurses Association and non-represented collection staff. Although it may be true that the Employer could administer labor relations in a multi-facility unit more efficiently than in individual units such as the one sought, that factor is not entitled to great weight. *Mercywood Health Building*, supra, 287 NLRB at 116.

involvement in a range of personnel and labor relations matters is not “routine in nature” but demonstrates meaningful local autonomy and participation in matters directly affecting the Bangor employees’ working lives. *Memorial Medical*, 230 NLRB at 976.; *Rental Uniform Services, Inc.*, 330 NLRB at 334; *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988).

B. Integration of the Employer’s Employees at its Bangor and Portland Facilities

In order to rebut a petitioned-for single-facility unit there must be evidence of “substantial interchange” among employees of different facilities. *O’Brien Memorial, Inc.*, 330 NLRB 553, 554 (1992). I find that such evidence is not present here. Initially, I note that the Employer’s evidence of employee interchange dealt solely with the collection staff employees, and thus I will only address those employees.⁵²

The Employer could point to only one permanent transfer, the transfer of Debra Merry transferred from Portland to Bangor, among its Bangor and Portland employees over a three-year period. The record, however, is void of the circumstances surrounding this request, including, what position Merry holds with the Employer. It can be inferred, however, that Merry holds a position within the collection staff, as her PAF indicates that Wells is her supervisor in Bangor. This transfer appears to be at the request of the employee as her PAF was introduced in conjunction with the Employer’s Internal Transfer/Bid Form. This form is used by current employees to apply for another position with the Employer. One permanent transfer in three years between the facilities is insignificant. In addition, transfers made at the request of an employee are afforded little weight in determining the extent of employee interchange. See *Renzetti’s Market*, 238 NLRB 174 fn. 8 (1978).

As for temporary transfers, Hassenfuss testified that temporary transfers occur between the two collection staffs at the Bangor and Portland facilities when mobile units need coverage. No documentation other than the drive schedules was produced to substantiate this assertion. Furthermore, it is not clear from the testimony whether the schedules indicating drives performed by mixed collection staffs occurred in the neutral zone or were due to lack of coverage which necessitated these temporary transfers. Nonetheless, in regards to this employee contact among the Employer’s Bangor and Portland collection staffs, it occurred in only 7.5 percent of the mobile drives. I find this percentage of work contact among the collection staffs was not substantial. Cf., *St. Luke’s Health System, Inc.*, 340 NLRB No. 139 (2003) (Board found that the employer rebutted the single-facility presumption in part based on evidence of regular interchange as up to 20 percent of the employees within all job classifications within the one facility floated to other locations in any given year); *West Jersey Health System*, 293 NLRB 749 (1989) (Board found that a multi-facility unit was appropriate because there were, among other things, significant permanent interchange and steady temporary interchange among the facilities.)

⁵² The Employer did provide evidence that it recently hired a donor recruitment representative to service the shared neutral territory, replacing the previous donor recruitment representative, who had worked at the Employer’s Bangor facility. This new donor recruitment representative works at the Employer’s Portland facility, which is closer to her home than the Bangor facility. It does not appear that this was an actual transfer, as the employee chose to work at the Portland facility as a term of her employment, and the Employer agreed.

Additionally, it appears that the Employer is suggesting that there are also working contacts among its collection staffs during training sessions and committee meetings. Employees at both facilities receive common training, and it appears that employees may attend training at another facility if they have missed the training at their own. In limited cases, the Employer has held some training sessions for employees of both facilities. The record, however, indicates that training involving both staffs is limited and is offset by the separate training sessions held at each facility. See *Rental Uniform, Inc.*, 330 NLRB at 336, citing *Bowie Hall Trucking*, 330 NLRB at 43. As for the committee meetings, only one employee from the Bangor collection staff is assigned to a committee and that committee has yet to meet. Thus there has been no contact as of yet. Lastly, the only employee from Portland that the Bangor collection staff has contact with, except working with Portland staff on a collection drive, is with Vincent, and in her absence during after hours, Black, to inform her of their absence from a drive when they are sick prior to the drive or en route to a drive. The Employer, however, failed to provide evidence of the frequency of this contact. Based on the foregoing, I am not persuaded that the limited degree of employee contact and interchange established by this record warrants a finding that the presumed community of interest enjoyed by the Bangor facilities has been merged with that of employees at the other facilities.

C. Geographic Proximity

Lending further support to my finding is the significant geographic distance between the two facilities. There are 128 miles separating the cities of Portland and Bangor in which the facilities are located, which is a substantial distance. See, e.g., *Rental Uniform Services, Inc.* 330 NLRB at 336. (The Board found that the geographic distances between its facilities, 22 miles and 55 miles to be significant.); *Oklahoma Blood Institute*, 265 NLRB at 1525. (The Board found distances of 170 miles and 85 miles between the employer's facilities to be substantial.)

VII. The Composition of the Unit

Having determined that the scope of the unit is properly limited to the Employer's Bangor facility, I now consider whether the composition of the unit should be limited to collection specialists, MUAs, donor center assistants, and distribution technicians, or if it must be expanded to include all non-professional, non-supervisory, and non-represented employees. The additional classifications urged by the Employer consist of one receptionist, three donor recruitment representatives, and an administrative assistant II.⁵³

Although the employees in these departments clearly share some terms and conditions of employment and may constitute an appropriate unit, the Board has substantial discretion when it selects an appropriate bargaining unit. There is nothing in the statute that requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit. The Act requires only that the unit be "appropriate." *Bartlett Collins Co.*, 334 NLRB 484 (2001)

⁵³ As indicated above, it appears that there was some mention in the record suggesting that the tele-recruiter representative, working out of Portland and supervised by Portland supervisors, who makes calls for the Bangor facility should be included in the Bangor unit, although it is not clear that this was a formal position taken by the Employer. Nonetheless, based on my reasoning regarding the donor recruitment representatives, I find that the tele-recruiter representative does not share a community of interest with the collection staff.

(emphasis added). Furthermore, a union is not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger’s Paramus*, 151 NLRB 748 751 (1965). Additionally, in the health care industry, as with other industries, unions are not required to organize the most comprehensive unit available or even the most appropriate unit. They need only select an appropriate unit. *Faribault Clinic, Ltd.*, 308 NLRB 131, 133 (1992).

Since the Employer is a non-acute health care facility, the proper test to determine the appropriate bargaining unit is the “empirical community of interest test.” *Park Manor Care Center, Inc.*, 305 NLRB 872, 875 fn. 16 (1991); *Allen Health Care Services*, 332 NLRB 1308, fn. 4 (2000); *Mercy Medical Center San Juan*, supra, 344 NLRB at 1. Under this test, the Board considers: 1) traditional community of interest factors; 2) those factors considered relevant to the Board in its rulemaking proceedings on Collective Bargaining Units in the Health Care Industry;⁵⁴ 3) the evidence presented during rulemaking with respect to units in acute care hospitals; and 4) prior cases involving either the type of unit sought or the type of health care facility in dispute. *Lifeline Mobile Medics, Inc.*, 308 NLRB 1068 (1992). Although blood bank facilities are unique and quite different from other health care facilities in structure, operations, and staffing, the Board, in *Park Manor Care Center, Inc.*, noted that certain general principles applicable to unit determinations in acute care facilities are applicable to non-acute care facilities such as blood banks, as well. 305 NLRB at 876. In doing so, the Board noted that in exercising its discretion to determine appropriate units, it must steer a careful course between two undesirable extremes. If the unit is too large, it may be difficult to organize and difficult for the union to represent. If the unit is too small, it may be costly for the employer to deal with and may even be deleterious for the union by too severely limiting its constituency and, hence, its bargaining strength. The Board’s goal is to find a middle-ground position, to allocate power between labor and management by “striking the balance” in the appropriate place, with units that are neither too large nor too small. *Id.* (citations omitted). Accordingly, in determining the appropriate unit, this balance must be struck by considering the traditional community of interest factors as well as prior cases dealing with blood banks.

A. Prior Cases Involving Blood Bank Type Employers

In prior cases involving blood bank type employer units, the Board has approved limited bargaining units other than wall-to-wall units. For example, in *Sacramento Medical Foundation Blood Bank*, 220 NLRB 904 (1975), the Board sanctioned a unit limited to medical laboratory technologists only. In *Greene County Chapter American Red Cross*, 221 NLRB 776 (1975), the Board found a unit limited to blood dispatchers appropriate and excluded nurses who worked with the dispatchers. Similarly, in *Midwest Region Blood Services*, 324 NLRB 166 (1997), a post-rulemaking case, the Board approved a unit of collection employees, MUAs, and supply clerks. Most recently, in *Laboratory Corporation of America Holdings*, 341 NLRB No. 140 (2004), the Board found appropriate a multi-facility unit of phlebotomists, administrative team leaders, technical team leaders, and reference clerks, excluding customer service representatives and drivers. Thus, there is ample precedent that less than wall-to-wall units are appropriate in blood bank-type settings and that such units strike the balance envisioned by the Board.

⁵⁴ See 29 CFR §103.30, 54 Fed. Reg. 16336-16348 (1989).

Moreover, as discussed in detail below, consideration of traditional community of interest factors also supports the conclusion that a unit limited to collection employees is appropriate.

A. Traditional Community of Interest Factors

The traditional factors in determining whether employees share a community of interest warranting their inclusion within a particular bargaining unit are similar to those factors considered in determining a bargaining unit's proper composition: 1) the degree of functional integration among employees; 2) common supervision; 3) nature of employees' skills, training, and functions; 4) interchange and contact among employees; 5) work situs; 6) common working conditions and fringe benefits; and 6) bargaining history. See *Washington Palm, Inc.* 314 NLRB 1122, 1126-1127 (1994).

No bargaining history exists for the employees at issue, so that factor cannot be considered. All of the Employer's employees are covered by the same personnel policies and procedures, wage grade system, and benefits package. While these factors show some community of interest among all of the Employer's employees, I conclude that these factors are outweighed by the other community of interest factors discussed below.

The employees involved in the collection of blood or blood products, including the MUAs, share a particularly strong community of interest. They work in teams and are supervised by Wells, or a team supervisor or charge nurse, while working a blood drive. They have a very high degree of contact and functional integration, as they are all involved in the processing of donors and collection of their blood and related products. The donor center assistants and the MUAs perform virtually the exact same work once they are at a drive, although the donor center assistants are not trained to transport, set up, or take down the mobile equipment.

These are regulated positions and carry the same OSHA I classification. These employees share unique interests and concerns given their daily, intimate contact with donors, and exposure to donors' blood and other bodily fluids. They are a distinct and homogenous group of employees whose duties and interests set them apart from other employees.

The two donor recruitment representatives employed at the Bangor facility are supervised by Dawn Gaffka, the donor recruitment manager, who is located at the Employer's Portland facility. The remainder of the donor recruitment department's staff is also located in Portland, including the one that services the shared neutral territory.⁵⁵ The donor recruitment representatives have a distinctly different function which undermines their community of interest with the employees directly involved in blood related activities. These employees are generally responsible for recruiting donors and setting up blood drives. The majority of their work is performed in advance of the collection work. The collection staff employees work on the front lines at either the fixed or mobile sites. It appears that the donor recruitment representatives

⁵⁵ The Employer urged that the donor recruitment representative located at its Portland facility who is responsible for the shared neutral territory should also be included in the unit. For the same reasons as I do with respect to the donor recruitment representatives at the Bangor facility, as well as the fact that she works at the Portland facility and has even less contact with unit employees than the donor recruitment representatives at the Bangor facility, I find that she does not share a community of interest with the collection staff and I will exclude her from the unit.

have little or no contact with the MUAs and collection employees. These employees typically do not go to blood drives. On the rare occasions that they are present at a drive, it is in a customer service capacity. They do not perform any of the tasks that the MUAs or the other collection staff employees perform.

The receptionist and administrative assistant positions at the Bangor facility are clerical in nature. Cathy Preyer is the administrative assistant to Wells and Laffey. On occasion, she assists some of the recruiters. The receptionist, as part of her duties, receives visitors at the facility, although it is not clear whether visitors are, in fact, donors. These employees serve an administrative function and there is no evidence of interchange with employees in the unit.

It is clear that while there is some functional integration between all of the non-professional positions, since they are all working towards the Employer's blood drive goals, a bargaining unit including all the employees who work together as teams, working on blood drives, is an appropriate unit based on the strong community of interest these employees share. This unit is the middle-ground unit of the kind the Board discussed in *Park Manor Care Center*.

Accordingly, based on the above and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time collection specialists, collection specialist/LPN, technician instructors, donor center assistants, mobile unit assistants, and distribution technicians employed by the Employer at its Bangor, Maine facility, but excluding all other employees, confidential employees, professional employees, guards, and supervisors as defined by the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by Teamsters Union Local No. 340 a/w International Brotherhood of Teamsters.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before September 16, 2005. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by September 23, 2005. You may also file the request for review electronically. Further guidance may be found under E-Gov on the National Labor Relations Board web site: www.nlr.gov.

Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 9th day of September, 2005.

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